83-1630

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

MARY ANN SCHWEGMANN, a/k/a
MARY ANN BLACKLEDGE,

Petitioner,

vs.

JOHN G. SCHWEGMANN, JR., et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI

LAW OFFICES OF
MARVIN M. MITCHELSON
1801 Century Park East
Suite 1900
Los Angeles, California 90067
(213) 277-5545

and

BETTYANNE LAMBERT-BUSSOFF
806 Perdido Street
Suite 402
New Orleans, Louisiana 70112
(504) 525-0966

BY: MARVIN M. MITCHELSON

Attorneys for Appellant
MARY ANN SCHWEGMANN a/k/a
MARY ANN BLACKLEDGE

Vol. I of II

I

QUESTIONS PRESENTED

1. Whether there are valid independent state grounds for the dismissal of Mary Ann Blackledge, a/k/a Mary Ann Schwegmann's cause of action for breach of an oral contract?

2. Whether or not Article 1481 of the Louisiana Civil Code violates the Equal Protection Clause of the Fourteenth Amendment to the federal Constitution?

II

LIST OF PARTIES

MARY ANN SCHWEGMANN, a/k/a
MARY ANN BLACKLEDGE

VS.

JOHN G. SCHWEGMANN, JR.,
JOHN F. SCHWEGMANN, MELBA
MARGARET SCHWEGMANN, AND
SCHWEGMANN BROS. GIANT
SUPERMARKETS, INC.,
SCHWEGMANN BROS. TERMINAL,
INC., SCHWEGMANN BROS.,
INC., SCHWEGMANN BROS. WEST-
BANK, INC., SCHWEGMANN BROS.
WESTSIDE CORPORATION AND
SCHWEGMANN VETERANS
CORPORATION

TOPICAL INDEX

INDEX TO APPENDICES

TABLE OF AUTHORITIES

Statutes	Page
Louisiana Civil Code (Con't)	
Article 2830	12
2831	12
2834	12

Articles

Equal Protection of the Laws	
Selected Essays 1938-62 (1963)	
37 Cal.L.Rev. 341 (1949)	39
The Great Retreat	
by Nicholas S. Timasheff	
1946 EP Dutton & Co., Inc.	21

IN THE
SUPREME COURT
OF THE UNITED STATES
October Term, 1983

MARY ANN SCHWEGMANN a/k/a
MARY ANN BLACKLEDGE

Appellants,

vs.

SUPREME COURT OF THE
STATE OF LOUISIANA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

V

CITATION TO OPINION BELOW

The opinion of the Honorable Judge Frank J. Zaccaria filed September 28, 1982 from the Twenty-Fourth Judicial District Court, Parish of Jefferson, State of Louisiana, was not reported. Nor was the opinion of the Fifth Circuit Court of Appeal, State of Louisiana filed November 9, 1983. The Supreme Court of the State of Louisiana denied the Petition for Writ of Certiorari and Review on January 6, 1984, without opinion.

VI

JURISDICTIONAL STATEMENT

The Petition for a Writ of Certiorari and Review of Mary Ann Blackledge, a/k/a Mary Ann Schwegmann, to the Supreme Court of the State of Louisiana was denied on January 6, 1984.

No rehearing nor extension

of time in which to petition for certiorari was requested.

The statutory provision believed to confer on this Court jurisdiction to review the judgment in question by writ of certiorari is 28 USC §1257(3).

VII

CONSTITUTIONAL PROVISIONS

The constitutional provisions and statutes involved in this case are as follows:

(a) The "Equal Protection Clause of Section 1 of the Fourteenth Amendment to the Federal Constitution:

> "Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

[Emphasis added]

(b) Article 1481 of the Louisiana Civil Code:

"Art. 1481. Those who have lived together in open concubinage are respectively incapable of making to each other, whether inter vivos or mortis causa, any donation of immovables; and if they make a donation of movables, it cannot exceed one-tenth part of the whole value of their estate.
Those who afterwards marry are excepted from this rule."

(c) Article 2829 of the Louisiana Civil Code (repealed by Acts 1980 No. 150):

"Universal partnership is a contract by which the parties agree to make a common stock of all the paroperty they respectively possess; they may extend it to all property real or personal, or restrict it to personal only; they may, as in other partnerships, agree that the property itself shall be common stock or that the fruits only shall be such; but property which may accrue to one of the parties, after entering into the partnership, by donation, succession or legacy, does not become common stock, and any stipulation to that effect, previous to the obtaining the property aforesaid, is void."

(d) Article 2830 of the Louisiana Civil Code (repealed by Acts 1980 No. 150):

> "A universal partnership of profits includes all the gains that may be made from whatever source, whether from property or industry, with the restriction contained in the last article, and subject to all legal stipulations to be made by the parties."

(e) Article 2831 of the Louisiana Civil Code (repealed by Acts 1980 No. 150):

> "If nothing more is agreed between the parties, than there shall be a universal partnership, it shall extend only to the profits of the property each shall possess, and of their credit and industry."

(f) Article 2834 of the Louisiana Civil Code (repeated by Acts 1980 No. 150):

> "A universal partnership cannot be created 'without writing signed by the parties, and registered in the manner hereafter prescribed.'"

(g) Article 2801 of the Louisiana Civil Code (effective January 1, 1980):

"A partnership is a jurisdical person distinct from its partners, created by a contract between two or more persons to combine their efforts or resources in determined proportions and to colloborate at mutual risk for their common profit on commercial benefit. * * * *
Section 3. The provisions of this act shall apply to all partnerships, including those existing on the effective date of this act [January 1, 1980]."

VIII

STATEMENT OF THE CASE

The salient facts of the case are as follows:

Plaintiff, Mary Ann Blackledge, a/k/a Mary Ann Schwegmann (hereinafter referred to as "Mary Ann"), began working at the Schwegmann Stores in 1958 when she was seventeen (17) years of age. Mary Ann thereafter became employed by the Shell Oil Company, where she worked until 1965. Notwithstanding her position at Shell, Mary Ann continued her duties

as a consultant to Defendant John G. Schwegmann, Jr., (hereinafter referred to as "John"), focusing primarily on managements and public relations.

As a result of Mary Ann's consulting activities, she and John commenced a joint venture relationship which engaged in the ownership and operation of several businesses, and which spanned a twenty-one (21) year time period. Mary Ann and John were primarily engaged in real estate development and acquisitions. Some of those ventures were commonly referred to as the Georgia/Pacific and ancillary land venture in St. Charles Parish, Powers Drive, Tall Timbers, Crowder Road, and Bullard Road. Mary Ann contributed all of her profits back into the joint venture projects during this entire period of time.

On May 15, 1966, Mary Ann and

John entered into an oral contract whereby they agreed, inter alia, that in exchange for Mary Ann's continuing to work as a consultant to the Schwegmann stores and in consideration of the joint venture nature of their real estate investments, they would share equally in any profits and proceeds realized as a result of those stores and investments. Pursuant to the contract, Mary Ann advised John and the board members of the corporations and companies comprising the Schwegmann stores (Schwegmann Brothers Giant Supermarkets, Inc., Schwegmann Bros. Terminal, Inc., Schwegmann Bros., Inc., Schwegmann Bros. Westbank, Inc., Schwegmann Bros. Westside Corporation, and Schwegmann Veterans Corporation) regarding (1) salaries of employees; (2) policy decisions; (3) design, planning and building of the Schwegmann stores built after 1968;

(4) the day to day operations of the stores. Mary Ann spoke to managers of the Schwegmann stores, tested products and compared prices for the stores, as well as wrote editorials contained within the advertisements run by the stores on a weekly basis.

On the personal level, Mary Ann and John resided together and Mary Ann took care of all of the household tasks at their residence, Green Acres Road House. Mary Ann cared for John's daughter for thirteen (13) years, as if she were her own, and later cared for John during his protracted illness until the termination of their relationship, at John's insistence, in 1978.

The constitutional argument was raised in the trial, appellate, and Supreme courts of the State of Louisiana.

Mary Ann filed a Petition for:

Specific Performance and/or Damages based on Breach of Contract, for the Recognition of Construction Trust or Damages Based on Implied Contract, for Declaratory Relief, for Quasi Contract and/or Quantum Meruit, for Interference with Contract Rights, and for Declaration of Simulation and/or Revocatory Action, in the 24th Judicial District Court, Parish of Jefferson, State of Louisiana, on October 5, 1979. The first and second causes of action sought recovery based on an oral contract and/or an implied in fact contract (based on the parties' conduct) whereby Mary Ann agreed to act as a business consultant for the Schwegmann stores and to participate with John Schwegmann in numerous real estate joint ventures, in addition to being John Schwegmann's companion, in exchange for a one-half ownership interest in John's interest

in the Schwegmann stores and a one-half interest in all of the parties' joint venture interests.

The petition was partially dismissed on a motion for summary judgment brought by the defendants, John J. Schwegmann, Jr., et al. The only cause of action not dismissed was that for Quasi-Contract and/or Quantum Meruit as that cause of action concerned Mary Ann's business as opposed to her personal endeavors on John's behalf. The judgment was signed on the 13th of September, 1982, and was timely appealed to the Fifth Circuit Court of Appeals. A Judgment was rendered by the Fifth Circuit Court of appeals on November 9, 1983, upholding the judgment of the lower court. No motion for a rehearing was filed. Mary Ann filed a Petition for a Writ of Certiorari with the Supreme Court of the State

of Louisiana. The Writ was denied on January 6 1984.

The two documents demonstrating that the constitutional issues were timely raised in the courts of the State of Louisiana are the decision, filed November 9, 1983, of the Court of Appeal, Fifth Circuit, State of Louisiana (a copy of which is attached hereto as Appendix "B"), and the Petition for Writ of Certiorari to the Supreme Court (a copy of which is attached hereto as Appendix "C"). The Court of Appeal's decision disposed of the constitutional issues raised on page 9 and 10, as follows:

> "A substantial portion of the plaintiff counsel's brief is devoted to a historical analysis of the Louisiana law on concubinage to show that its development was predicated on public policy construed by the judiciary. She then argues that changes in the mores of society as regards cohabitation have changed to radically, we should not impose on a man and woman who cohabitate without marriage a standard based

on moral considerations merely to protect Victorian values which have been abandoned by so many in our society. Therefore, she urges it is time for the courts of Louisiana to develop a legal vehicle to protect the property rights obtained during cohabitation by a male and female in a sexual relationship without benefit of marriage. In support of the contentions, she urges a constitutionally protected right against discrimination between wives and concubines. She compares the discrimination she sees to that formerly existing between legitimate and illegitimate children and says concubinage discriminates against black heritage and culture but more particularly against women.

We neither agree with her appreciation of the sociological changes nor the necessity for a change in legal philosophy as to concubinage nor do we see the violation of a constitutionally protected right against discrimination. The State has valid reason to discourage relationships which serve to erode the cornerstone of society, i.e., the family. In every known civilized society, replacement of its members is performed within the context of the family. Although it is conceivably possible that sexual relations and child rearing could be deregulated or governed by norms that do not entail the encouragement, support and protection of family institutions, past experiments in that direction have failed. (See "The Attempt to Abolish

the Family in Russia" in The Great Retreat by Nicholas S. Timasheff, Copyright 1946 by E.P. Dutton & Co., Inc. Further, in the case of the children, legitimate or illegitimate, they were not the cause of their status, but here the status of concubine was a voluntary and desired one, for the partis neither married, wanted to marry, nor believed they were married.

Under present Louisiana law, unmarried cohabitation does not give rise to property rights analogous to or similar to those of married couples. Concubines have no implied contract or equitable liens that afford them any rights in the property or their paramours. Moreover, in our view, although Victorian, the values sought to be protected by the formulation of those legal concepts are imperative if we are to maintain our civilized society.

As framed in Mary Ann's Petition for Certiorari, the constitutional issues are:

"ISSUE XI. Does Louisiana Civil Code Article 1481 violate the United States Constitution . . .?"

"ISSUE XII. Does the public policy argument used by the Court in concubinage cases violate the United States Constitution . . .?"

IX

SPECIAL AND IMPORTANT REASONS FOR A REVIEW OF THIS CASE ON A WRIT OF CERTIORARI (Argument in Accordance with Rule 17)

In this case, a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort, i.e., the California Supreme Court in the case of Marvin v. Marvin (1976) 18 Cal.3d 660, in addition to which, a state court has decided an important question of federal law which has not been, but should be, settled by this Court, and, moreover, has decided a federal question in a way in conflict with applicable decision of this Court.

At first blush, it might appear that there exists valid independent state grounds for the dismissal of Mary Ann's oral contract cause of action, but, as will be demonstrated below, such is not

the case. Furthermore, there are no possible independent state grounds for the dismissal of Mary Ann's implied in fact contract claim, and it will be demonstrated that the dismissal of both of these causes, as they pertain to Mary Ann's business ventures with John Schwegmann, violate the Equal Protection Clause of the Fourteenth Amendment to the federal Constitution.

A. THERE ARE NO VALID INDEPENDENT STATE GROUNDS FOR THE DISMISSAL OF MARY ANN'S CAUSE OF ACTION FOR BREACH OF ORAL CONTRACT

Both the trial court and the Court of Appeals found that Mary Ann's oral contract with John was void as it constituted a "universal partnership" which must, to be valid, be in writing. As is made abundantly clear in Mary Ann's Petition for a Writ of Certiorari, filed with the Supreme Court for the State

of Louisiana (attached hereto as Appendix "C"), the universal partnership provisions of the Louisiana Civil Code, Articles 2829 to 2834, were repealed by Act 150 of 1980. The new partnership law in the State of Louisiana, Articles 2801 through 2890 of the Louisiana Civil Code, effective January 1, 1981, eliminated all classifications of partnerships. Under this new law, the only type of partnership in existence is an ordinary partnership which need not be in writing to be valid. Article 2801 of the Louisiana Civil Code. Furthermore, Section 3 of the new law provides that the provisions of the Act are to be applied to all partnerships in existence on the effective date of the Act, i.e., January 1, 1981.

Mary Ann's and John's partnership, as alleged and as accepted as fact for purposes of the motion for summary judgment,

was created in 1966 and continues to exist to the present time. The fact that John has breached certain provisions of the partnership agreement between the parties does not effect its existence as a legal entity, but only necessitates the judicial imposition of one or more remedies. Therefore, the agreement need not have been in writing to be valid, and the lower courts' purported independent state grounds for invalidating the express partnership must fail.

B. THE LOWER COURTS' DISMISSAL OF MARY ANN'S CONTRACTUAL CLAIMS, (BOTH ORAL AND IMPLIED) WHILE UPHOLDING HER QUANTUM MERUIT CLAIM, REGARDING THE BUSINESS SERVICES SHE PROVIDED THE SCHWEGMANN STORES AND JOHN PERSONALLY, VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION

The lower courts' properly determined that, given the opportunity to do so, Mary Ann could establish real

and substantial business services performed for the defendants, including John, that have not been previously compensated and which were separate and distinct from the concubinage relationship. (Decision of the Court of Appeals, attached hereto as Appendix "B", page 13.) In the words of the Court of Appeals:

> "Plaintiff testified she performed business services for Mr. Schwegmann and his corporations by (1) helping him write editorials for Schwegmann's newspaper advertisements; (2) rendering investment advice; (3) assisting and rendering advice as to Mr. Schwegmann's political career; and 94) keeping him informed of things she saw in the stores which could have an adverse effect on the business. Under our law, the plaintiff may be entitled to compensation for the rendition of the services if the services were in fact rendered and do meet the prerequisites of the equitable principles formulated by the jurisprudence for recovery. In the Bonaventure case, supra, the Third Circuit clearly stated the equitable principles upon which recovery can be had:
>
> 'Our jurisprudence appears settled to the effect that

> predicated upon equitable principles, the claims of a paramour and concubine will be recognized and enforced with respect to joint or mutual commercial ventures, provided such enterprises arose independently of the illicit relationship. Heatwold v. Stansbury, 212 La. 685, 33 So.2d 196; Sparrow v. Sparrow, 231 La. 966, 93 So.2d 232; Foshee v. Simkin, La. App., 174 So.2d 915.
>
> The rationale of the rule pronounced in the Heatwole, Sparrow and Foshee cases, supra (and the numerous authorities therein cited) is that where the concubinage is merely incidental to the business arrangement, the equitable rights of both parties will be recognized and enforced provided they be established by strict and conclusive proof. Stated otherwise, the rule is that if the commercial enterprise is independent of the illegal cohabitation, each party may assert his rights in the common endeavor.'

Since the issue arose on a motion for summary judgment the trial judge concluded and we agree the plaintiff must be given every benefit of the doubt. Conceivably given the opportunity to do so, she could establish real and substantial business services performed for the defendants, including Mr.

> Schwegmann, that have not been previously compensated and which were separate and distinct from the concubinage relationship. Accordingly, we agree with the trial judge's ruling excepting her claim of compensation for business services from the summary dismissal of her claims."

The lower courts' determination that Mary Ann is limited to the equitable remedy of quantum meruit, as opposed to her legal remedies for breach of contract, appears to be predicated, albeit tacitly, on Louisiana Civil Code Article 1481, which provides as follows:

> "Art. 1481. Those who have lived together in open concuginage are respectively incapable of making to each other, whether inter vivos of mortis causa, any donation of immovables; and if they make a donation of movables, it can not exceed one-tenth part of the whole value of their estate.
>
> Those who afterwards marry are excepted from this rule."

Denying Mary Ann her legal remedies simply because she was also engaged in a so-called "concubinage"

relationship with her business partner is a clear and patent denial of equal protection pursuant to the federal Constitution and thus, Article 1481 is overinclusive.

The basic principles governing application of the Equal Protection Clause of the Fourteenth Amendment are extremely familiar to this Honorable Court. As explained by the Chief Justice in Reed v. Reed, 404 U.S. 71, 75-76 (1971):

> "In applying that clause, this Court has consistently recognized that the Fourteenth Amendment does not deny States the power to treat different classes of persons in different ways. Barbier v. Connolly, 113 U.S. 27 (1885); Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911); Railway Express Agency v. New York, 336 U.S. 106 (1949); McDaniel v. Board of Election Commissioners, 394 U.S. 802 (1969). The Equal Protection Clause of that amendment does, however, deny to the States the power to legislate that different treatment to be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification 'must be reasonable, not arbitrary,

> and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.'" Royster Guano Co. v. Virginia, 253 U.S. 412. 415 (1920)."

Thus, the question for this Court's determination in this case is whether there is some ground of difference that rationally explains the different treatment accorded business partners who have never engaged in sexual relations and business partners whose enterprises arose independently of their sexual relationship.

In Eisenstadt, this Court held that a Massachusetts statute prohibiting, inter alia, the dispensing of contraceptives to unmarried persons provided dissimilar treatment for married and unmarried persons who are similarly situated and thus violated the Equal Protection Clause of the

Fourteenth Amendment. Eisenstadt, supra, 405 U.S. at 446-455. This Court based its holding on its conclusion that the deterrence of premarital sex could not have reasonaby been regarded as the purpose of the Massachusetts law. Id. at 448. In so concluding, this Court reasoned as follows:

> "It would be plainly unreasonable to assume that Massachusetts has prescribed pregnancy and the birth of an unwanted child as punishment for fornication, which is a misdemeanor under Massachusetts General Laws Ann., c. 272 §18. Aside from the scheme of values that assumption would attribute to the State, it is abundantly clear that the effect of the ban on distribution of contraceptives to unmarried persons has at best a marginal relation to the proffered objective. What Mr. Justice Goldberg said in Griswold v. Connecticut, supra, at 498 (concurring opinion), concerning the effect of Connecticut's prohibition on the use of contraceptives in discouraging extramarital sexual relations, is equally applicable here. 'The rationality of this justification is dubious, particularly in light of the admitted widespread availability to all persons in the State of Connecticut, unmarried

as well as married, of birth-control devices for the prevention of disease, as distinguished from the prevention of conception.' See also id., at 505-507 (WHITE, J., concurring in judgment). Like Connecticut's laws, §§21 and 21A do not at all regulate the distribution of contraceptives when they are to be used to prevent, not pregnancy, but the spread of disease. Commonwealth v. Corbell, 307 Mass. 7, 29 N. E. 2d 151 (1940), cited with apprval in Commonwealth v. Baird, 355 Mass., at 754, 247 N. E. 2d, at 579. Nor, in making contraceptives available to married persons without regard to their intended use, does Massachusetts attempt to deter married persons from engaging in illicit sexual relations with unmarried persons. Even on the assumption that the fear of pregnancy operates as a deterrent to fornication, the Massachusetts statute is thus so riddled with exceptions that deterrence of premarital sex cannot reasonably be regarded as its aim.

Moreover, §§21 and 21A on their face have a dubious relation to the State's criminal prohibition on fornication. As the Court of Appeals explained, 'Fornication is a misdemeanor [in Massachusetts], entailing a thirty dollar fine, or three months in jail. Massachusetts General Laws Ann. c. 272 § 18. Violation of the present statute is a felony punishable by five years in prison. We find it hard to believe

> that the legislature adopted a statute carrying a five-year penalty for its possible, obviously by no means fully effective, deterrence of the commission of a ninety-day misdemeanor.' 429 F. 2d, at 1401. Even conceding the legislature a full measure of discretion in fashioning means to prevent fornication, and recognizing that the State may seek to deter prohibited conduct by punishing more severely those who facilitate than those who actually engage in its commission, we, like the Court of Appeals, cannot believe that in this instance Massachusetts has chosen to expose the aider and abetter who simply gives away a contraceptive to 20 times the 90-day sentence of the offender himself. The very terms of the States criminal statutes, coupled with the de minimis effect of §§ 21 and 21A in deterring fornication, thus compel the conclusion that such deterence cannot reasonably be taken as the purpose of the ban on distribution of contraceptives to unmarried persons."

In terms of the standard of review to be applied in this case, it bears noting that this case presents a hybrid situation in that the area of regulation is economic, but the classification involves privacy concerns. It is

respectfully submitted that the "intermediate" level of scrutiny utilized in Eisenstadt, supra, is the standard most befitting of the instant set of facts. As interpreted by the Louisiana courts, Article 1481 is justified by the State's "valid reason to discourage relationships which serve to erode the cornerstone of society, i.e., the family. . . . . Moreover, in our view, although Victorian, the values sought to be protected by the formulation of those legal concepts are imperative if we are to maintain our civilized society." (Appendix "B", p. 9).

In the language employed by this Court in Eisenstadt,

> "[a]side from the scheme of values that assumption would attribute to the State, it is abundantly clear that the effect of the [application of Article 1481 to business partners whose ventures are independent of their sexual relationship] has at

best a marginal relation to the proferred objective."

Eisenstadt, supra, 405 U.S. at 446.

First, the identical argument was persuasively rejected by the California Supreme Court in the landmark case of Marvin v. Marvin (1976) 18 Cal.3d 660, wherein the Court held that the terms of the contract as alleged by a nonmarital cohabitator did not rest upon any unlawful consideration and thus it furnished a suitable basis upon which the trial court could render declaratory relief:

> "The argument that granting remedies to the non-marital partners would discourage marriage must fail; as [In re Marriage of] Cary [(1973), 34 Cal.App.3d 345] pointed out, 'with equal or greater force the point might be made that the pre-1970 rule was calculated to cause the income-producing partner to avoid marriage and thus retain the benefit of all of his or her accumulated earnings.' (34 Cal.App.3d at p. 353.) Although we recognize the well-established public policy to foster and promote the institution of marriage (see Deyoe v. Superior Court (1903) 140 Cal. 476, 482 [74 P. 28]), perpetuation of judicial

rules which result in an inequitable distribution of property accumulated during a nonmarital relationship is neither a just or an effective way of carrying out that policy.

In summary, we believe that the prevalence of nonmarital relationships in modern society and the social acceptance of them, marks this as a time when our courts should by no means apply the doctrine of the unlawfulness of the so-called meretricious relationship to the instant case. As we have explained, the nonenforceability of agreements expressly providing for meretricious conduct rested upon the fact that such conduct, as the word suggests, pertained to and encompassed prostitution. To equate the nonmarital relationship of today to such a subject matter is to do violence to an accepted and wholly different practice.

We are aware that many young couples live together without the solemnization of marriage, in order to make sure that they can successfully later undertake marriage. This trial period, preliminary to marriage, serves as some assurance that the marriage will not subsequently end in dissolution to the harm of both parties. We are aware, as we have stated, of the pervasiveness of nonmarital relationships in other situations.

The mores of the society have indeed changed so radically in regard to cohabitation that we cannot impose a standard based on alleged moral

considerations that have apparently been so widely abandoned by so many. Lest we be misunderstood, however, we take this occasion to point out that the structure of society itself largely depends upon the institution of marriage, and nothing we have said in this opinion should be taken to derogate from that institution. The joining of the man and woman in marriage is at once the most socially productive and individually fulfilling relationship that one can enjoy in the course of a lifetime.

(8b) We conclude that the judicial barriers that may stand in the way of a policy based upon the fulfillment of the reasonable expectations of the parties to a nonmarital relationship should be removed. As we have explained, the courts now hold that express agreements will be enforced unless they rest on an unlawful meretricious consideration. We add that in the absence of an express agreement, the courts may look to a variety of other remedies in order to protect the parties' lawful expectations." Marvin, supra, 18 Cal.3d at 683-684.

The instant case poingantly demonstrates the fallacy in the Louisiana court's reasoning (and the correctness in the California court's reasoning) regarding the discouragement of relation-

ships which serve to erode the family. John, the wealthier of the two income-producing partners, was the partner who sought to avoid marriage. Marriage would have resulted in Mary Ann's automatic entitlement to her fair share of the fruits of their joint labors, whereas John's refusal to marry Mary Ann has, at least for a time, resulted in her being deprived of those fruits.

The Louisiana courts' justification becomes even more dubious when Article 1481 is applied to business partners who incidentally cohabitate. See, e.g., Ferguson v. Scheunemann (1959) 167 Cal.App.2d 413.

It is an absurd proposition that all business partners who have legitimate business relations outside of their sexual liason must marry in order to be granted the right to their share of

their business acquisitions, and such compulsion cannot reasonably be taken as the purpose of the ban on contracts as between "concubines" and "paramours". Thus, it is readily apparent that Article 1481 of the Louisiana Civil Code is over-inclusive.

The analysis of the requisite relationship between classifications and legislative objectives called for by traditional equal protection standards, in the classic discussion by Tussman and tenBroek, "The Equal Protection of the Laws," 37 Cal.L.Rev. 341 (1949), Selected Essays 1938-62 (1963), includes an excellent discussion of "over-inclusiveness":

> "[This] . . the type of classification imposes a burden upon a wider range of individuals than are included in the class of those tainted with the mischief at which the law aims. It can thus be called 'over-inclusive.' [It] is exemplified by the quarantine

> and the dragnet. The wartime treatment of American citizens of Japanese ancestry is a striking recent instance of the imposition of burdens upon a large class of individuals because some of them were believed to be disloyal . . ."

Clearly, Article 1481 of the Louisiana Civil Code is over-inclusive as it precludes all persons who have lived together in "open concubinage" from contracting respecting their immovables with no exception made for persons such as Mary Ann who also engaged in independent business relations with their "paramours".

Thus, by providing dissimlar treatment for business partners who have not engaged in sexual relations and business partners who have engaged in sexual relations wholly independent from their business relationship who are similarly situated, Article 1481 of the Louisiana Civil Code violates the Equal Protection Clause. Eisenstadt, supra, 405 U.S.

at 454-455.

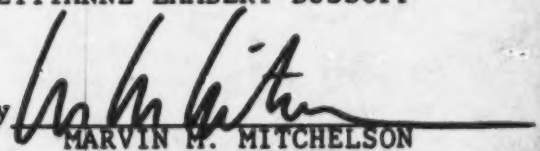
X

CONCLUSION

For all of the foregoing reasons, Petitioner, Mary Ann Blackledge, a/k/a Mary Ann Schwegmann, respectfully requests that this Honorable Court grant her Petition for a Writ of Certiorari.

Respectfully submitted,

LAW OFFICES OF
MARVIN M. MITCHELSON
and
BETTYANNE LAMBERT-BUSSOFF

By 
MARVIN M. MITCHELSON

Attorneys for Appellant

MARY ANN SCHWEGMANN
a/k/a/
MARY ANN BLACKLEDGE

APPENDIX A

APPENDIX "A"

TWENTY-FOURTH JUDICIAL
DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 231-175 DIVISION "B"

MARY ANN BLACKLEDGE

VERSUS

JOHN G. SCHWEGMANN, JR., ET AL.

FILED:_____ _____
DEPUTY CLERK

F I L E D

SEP 28 1982

R. MARTIN
Deputy Clerk

JUDGMENT

Considering Defendants' Motion for Summary Judgment filed by defendants John G. Schwegmann, John F. Schwegmann, Melba Margaret Schwegmann and Schwegmann Giant Super Markets, Inc; the pleadings, depositions and affidavits in this case; the memoranda and oral arguments

of counsel; for the reasons stated in the Reasons for Judgment issued this date and for reasons orally assigned;

IT IS ORDERED that Defendants' Motion for Summary Judgment be granted dismissing all of plaintiff's claims except that the Court denies the Motion for Summary Judgment insofar as plaintiff seeks to recover in quantum meruit for the value of uncompensated services, if any, performed separate and apart from the relationship of concubinage, rendered by her in furnishing business assistance to the defendants.

Gretna, Louisiana

September 28, 1982

S/ Frank J. Zaccaria
JUDGE

A TRUE COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE

R. MARTIN
Deputy Clerk
24TH JUDICIAL DISTRICT COURT
Parish of Jefferson, LA.

TWENTY-FOURTH JUDICIAL
DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 231-175 DIVISION "B"

MARY ANN BLACKLEDGE

VERSUS

JOHN G. SCHWEGMANN, JR., ET AL.

FILED:_____ _____
DEPUTY CLERK

F I L E D

SEP 28 1982

R. MARTIN
DEPUTY CLERK

ORDER

Considering the Rule to Show Cause Why the Firms of Stone, Pigman, Walther, Wittmann & Hutchinson and Charbonnet & Charbonnet Should Not Be Recused from their Representation of Defendants for a Violation of the A.B.A. and Louisiana Codes of Professional Responsibility

filed by plaintiff Mary Ann Blackledge; the evidence presented at the hearing held in this proceeding on September 3, 1982; the memorandum and oral arguments of counsel; and for reasons orally assigned;

IT IS ORDERED that the plaintiff's Rule to Show Cause Why the Firms of Stone, Pigman, Walther, Wittmann & Hutchinson and Charbonnet & Charbonnet Should Not Be Recused from their Representation of Defendants for a Violation of the B.B.A. and Louisiana Codes of Professional Responsibility is denied as to Stone, Pigman, Walther, Wittmann & Hutchinson and is continued without date as to Charbonnet & Charbonnet.

Gretna, Louisiana
September 28, 1982

s/ Frank J. Zaccaria
JUDGE

TWENTY-FOURTH JUDICIAL
DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 231-175 DIVISION "B"

MARY ANN BLACKLEDGE

VERSUS

JOHN G. SCHWEGMANN, JR., ET AL.

FILED: _____ _____
DEPUTY CLERK

ORDER

Considering the Rule to Show Cause Why the Negotiated Settlement Should Not Be Enforced filed by plaintiff Mary Ann Blackledge; the evidence presented at the hearing held in this proceeding on September 3, 1982; the memorandum and oral arguments of counsel; and for reasons orally assigned;

IT IS ORDERED that the plaintiff's Rule to Show Cause Why the Negotiated

Settlement Should Not Be Enforced is dismissed.

Gretna, Louisiana

September 28, 1982

s/ Frank J. Zaccaria
JUDGE

TWENTY-FOURTH JUDICIAL
DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 231-175 DIVISION "B"

MARY ANN BLACKLEDGE

VERSUS

JOHN G. SCHWEGMANN, JR., ET AL.

FILED:_____ _____
DEPUTY CLERK

REASONS FOR JUDGMENT
ON
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiff Mary Ann Blackledge has brought this action against John G. Schwegmann, his children John. F. Schwegmann and Melba Margaret Schwegmann and certain business entities praying for judgment declaring her owner of a one-half undivided interest in Mr. Schwegmann's property, an interest she values at thirty million dollars, and certain other relief.

Defendants John G. Schwegmann,

John F. Schwegmann, Melba Margaret Schwegmann and Schwegmann Giant Super Markets, Inc. have filed a Motion for Summary Judgment requesting dismissal of all plaintiff's claims. For purposes of the motion, we accept as true the plaintiff's extensive deposition testimony.

Plaintiff claims that she and Mr. Schwegmann, who lived together without marriage for twelve years, had an oral contract. The substance of the contract she claims is that early in their relationship Mr. Schwegmann said he wanted to "share everything" with her and that she said "okay." At the time of this conversation, Mr. Schwegmann owned a chain of supermarkets and other substantial assets and plaintiff owned nothing whatsoever. The claimed contractual agreement was never reduced to writing, and there were no witnesses to the alleged conversa-

tion.

Plaintiff claims that, on the basis of this "contract," she acted as a "wife" to Mr. Schwegmann, performed household services for him, helped to raise his daughter Margie Schwegmann, assisted him in his business and political careers, and gave him investment advice. Plaintiff ceased to live at Mr. Schwegmann's home in May 1978. He continued to make payments to her, and they continued to have intimate relations until she filed this suit in october 1979.

In addition to her claims based on the alleged oral contract, plaintiff requests recognition of a constructive trust on her behalf on one-half of Mr. Schwegmann's property, and compensation in quantum meruit for domestic and business services. She also prays for certain declaratory relief, for damages based

on interference with contract rights, and for a declaration that a sale of stock was a simulation. Ms. Blackledge claims that a partnership was created between herself and Mr. Schwegmann, and asks the Court to dissolve the partnership and distribute the assets.

We will discuss separately each of plaintiff's claims.

Oral Contract

Plaintiff requests specific performance of an oral contract between herself and Mr. schwegmann, or, alternatively, damages for breach of that contract. In her petition plaintiff alleges that she and Mr. Schwegmann agreed that they would "live together", that they would combine their skills, efforts, labor and earnings" and that they would "share equally any and all assets and property acquired and/or accumulated as the result

of said joint skills, efforts, labor and earnings." In her deposition plaintiff testified that she and Mr. schwegmann had a conversation after she moved into his house in which Mr. Schwegmann stated that he wished to "share everything" with her and she said "okay". She further testified that because of these words it was her understanding that she and Mr. Schwegmann were going to pool all of their assets, work together and share their assets. She specifically testified that the understanding between herself and Mr. schwegmann was never reduced to writing.

Defendants claim that no valid contract was every confected between plaintiff and Mr. Schwegmann for four independent reasons. First, the "contractual agreement" alleged by Miss Blackledge is a universal partnership, and is invalid

because it was not made in writing. Second, no contract was ever confected between Miss Blackledge and Mr. Schwegmann because under Louisiana Civil Code articles 1779(3) and 1886 the object of the alleged contract was not certain. Third, the alleged contract is not supported by adequate consideration; and fourth, the alleged contract is void because it is meretricious.[1]

The Court does not find it necessary to reach the last three arguments made by the defendants, because the Court finds that the contract plaintiff alleges would have been a universal partnership

---

1 For reasons stated below, the testimony of the plaintiff leaves no doubt that the alleged contract was in fact meretricious. This fact alone would probably suffice to defeat the plaintiff's contract claim and many of the other claims that she asserts.

The Court does not find it necessary to reach the last three arguments made by the defendants, because the Court finds that the contract plaintiff alleges would have been a universal partnership which could not have been valid unless it had been made in writing.

Article 2829 of the Louisiana Civil Code, repealed in 1980, defined a universal partnership as follows:

> Universal partnership is a contract by which the parties agree to make a common stock of all the proeprty they respectively possess; they may extend it to all property real or personal, or restrict it to personal only; they may, as in other partnerships, agree that the property itself shall be common stock or that the fruits only shall be such; but property which may accrue to one of the parties, after entering into the partnership, by donation, succession or legacy, does not become common stock, and any stipulation to that effect, previous to the obtaining the property aforesaid, is void.

Articles 2830 and 2831 contained the

following additional provisions relating to universal partnerships:

> A universal partnership of profits includes all the gains that may be made from whatever source, whether from property or industry, with the restriction contained in the last article, and subject to all legal stipulations to be made by the parties.
>
> If nothing more is agreed between the parties, than that there shall be a universal partnership, it shall extend only to the profits of the property each shall possess, and of their credit and industry.

The "contractual agreement" described in the plaintiff's petition fits exactly the codal definition of universal partnership. The plaintiff alleges that she and Mr. Schwegmann agreed that "they would combine their skills, efforts, labor and earnings and would share equally and and all assets and property acquired and/or accumulated as a result of said joint skills, efforts, labor and earnings." Indeed, Miss Blackledge asks in her prayer

that this Court determine that the conduct of the parties created a "partnership" that includes "all of the said assets and property", and asks that the "partnership" be dissolved.

Similarly, the "sharing" agreement described in Miss Blackledge's deposition testimony is plainly a universal partnership. Plaintiff stated it was her understanding that she and Mr. Schwegmann were going to pool all of their assets, work together, share the assets and share the fruits of their labors. Plaintiff clearly testified that the agreement was not reduced to writing.

Under the Civil Code, a universal partnership cannot be created "without writing signed by the parties, and registered in the manner hereafter prescribed." La. Civ. Code Art. 2834 (repealed by Acts 1980 No. 150). An unwritten

and unrecorded universal partnership has no effect, even as between the parties. Heatwole v. Stansbury, 212 La. 685, 33 So.2d 196 (1947); Lagarde v. Dabon, 155 La. 25, 98 So. 744 (1923).

It has been repeatedly held that Louisiana law does not recognize as a valid universal partnership an oral agreement between a man and woman who live together and agree to split certain properties standing in the name of one of them. Heatwole v. Stansbury, supra; Foshee v. Simkin, 174 So.2d 915 (La. App. 1st Cir. 1965); Chambers v. Crawford, 150 So.2d 61 (La. App. 2nd Cir. 1963); Succession of Davis, 142 So.2d 481 (La. App. 2nd Cir. 1962); Gadlin v. Deggs, 23 So.2d 704 (La. App. Orl. Cir. 1945).

Therefore, the Court holds that the oral contract alleged by the plaintiff is a universal partnership that is invalid

because not made in writing.

Constructive Trust

Plaintiff claims damages based on a constructive trust she asks this Court to impose on one-half of Mr. Schwegmann's property. She asks the Court to recognize this trust because of a contract she says is implied by the fact that she and Mr. Schwegmann cohabited for twelve years. She claims that she had a "reasonable expectation and belief" that she and Mr. Schwegmann had an agreement, and that she had the greatest confidence and trust in Mr. Schwegmann. She relied on him to disclose their joint properties and divide them in an equal manner.

A constructive trust, or equitable lien, is commonly understood to mean the equitable imposition of a trust of lien on property because of a fiduciary relationship between the parties.

Even if the Louisiana Civil Code allowed the imposition of a constructive trust on property, which it does not, plaintiff has not established the fiduciary relationship that is at the heart of the concept of a constructive trust.

Moreover, in Louisiana not even a wife has a privilege on the property of her husband, even for her dotal or paraphernal funds received by him. Friend v. Fenner, 2 La. Ann. 789 (1847). Therefore, the Court refuses to impose a constructive trust on property for plaintiff's benefit.

Implied Contract

Miss Blackledge asks the Court to award her damages based on a theory of implied contract. She apparently takes the position that the fact that she and Mr. Schwegmann lived together, even though

without benefit of marriage, allows her a community-like interest in his property and the right to receive a form of quasi-alimony. What Miss Blackledge asks the Court, in essence, is to characterize her relationship with Mr. Schwegmann as a marriage, when in fact she and Mr. Schwegmann were never married to each other and neither of them ever believed they were married to each other. This the Court refuses to do.

Claims like the plaintiff's are not foreign to Louisiana courts. Louisiana law has defined a person in Miss Blackledge's position as a concubine, a woman who "occupies the position, performs the duties, and assumes the responsibilities of a wife, without the title and privileges flowing from a legal marriage." Purvis v. Purvis, 162 So.239, 240 (La. App. 2d Cir. 1935). Louisiana

terminology for the man with whom a concubine lives is "paramour".

A great body of jurisprudence has grown up confirming that concubines and paramours have no rights in each other's property. Jackson v. Hampton, 134 So.2d 114 (La. App. 2d Cir. 1961); Rochelle v. Hezeau, 15 La. Ann. 306 (1860). See also Mintz & Mintz Inc. v. Color, 250 So.2d 816 (La. App. 4th Cir. 1971) where no garnishment of a woman's wages could be had for the debt of her paramour) and Sims v. Matassa, 200 So. 666 (La. App. 1st Cir. 1941) (where no seizure of a woman's property could be accomplished to satisfy her paramour's debt).

The Fourth Circuit Court of Appeal recently refused to recognize a concubine as a surviving spouse in community and succinctly described Louisiana law: "The law could scarce be plainer:

a sharing of bed and table, for a night or for a lifetime, does not by itself constitute marriage." Succ. of Donahue, 389 So.2d 879, 880 (La. App. 4th Cir. 1980). See also Sesostris Youchican v. Texas & P. R. Co., 147 La. 1080, 86 So. 551 (1920); Foshee v. Simkin, supra.

Unmarried cohabitation does not give rise to property rights analogous to or the same as property rights of married couples. Concubines have no implied contract that affords them any rights in the property of their paramours. Plaintiff's claim to a portion of Mr. Schwegmann's property on the theory of an implied contract between them is denied.

Declaratory Relief

The plaintiff's claim for a declaratory judgment is merely a corollary of her claims for breach of contract and implied contract, and is dismissed with

these claims.

Quantum Meruit

Miss Blackledge alleges that, even if there was no contract between herself and Mr. Schwegmann, she is due compensation for the services she rendered to Mr. Schwegmann under the theory of quantum meruit. She requests payment for domestic services rendered in the Schwegmann household and for business services allegedly performed for defendants.

Recovery on the basis of quantum meruit is based on the idea that no one should be allowed to enrich himself at the expense of another. La. Civ. Code art. 1965. When one benefits from the labor of another, the law implies a promise to pay a reasonable amount for the labor, even in the absence of a specific contract. Bordelon Motors, Inc. v. Thompson, 176 So.2d 836 (1a. App. 3rd

Cir. 1965).

a. Claim in Quantum Meruit for Domestic Services

Plaintiff claims that she rendered certain domestic services in Mr. Schwegmann's household including cooking, cleaning, chauffering, taking care of Mr. Schwegmann's daughter Margie, and acting as a nurse to him after his stroke. For these services she makes a claim for compensation on the basis of quantum meruit.

No recovery in quantum meruit can be had when the underlying agreement is illegal. As one Louisiana Court put it, "since the basis of quantum meruit is an implied contract to pay for services rendered, no recovery can be had where the contract implied is illegal." Jary v. Emmett, 234 So.2d 530, 531-32 (La. App. 3rd Cir. 1970). And an arrangement

wherein sexual services form an integral part is illegal. Guerin v. Bonaventure, 212 So.2d 459 (La. App. 1st Cir. 1968); Chambers v. Crawford, supra. Louisiana law clearly disallows claims by concubines in quantum meruit when the services rendered are intertwined with illegal cohabitation. In Guerin v. Bonaventure, 212 So.2d at 464-65, claims of a concubine in quantum meruit were denied because the services rendered were found indistinguishable from the relationship of concubinage:

> In view of the parties living together as man and wife, it was only natural that plaintiff lend some assistance to the paramour who furnished full subsistence and a home for plaintiff and her child as if they were his lawful wife and offspring. In this manner plaintiff received full remuneration for services rendered to defendant Bonaventure in performing the duties of mistress of his household and some measure of assistance in his various business enterprises.

* * *

> All of the circumstances considered, the services rendered by plaintiff are so completely intertwined with her illegal cohabitation with Bonaventure as to be utterly indistinguishable therefrom. In such circumstances, the remuneration received in the form of support and subsistence over the years is in law deemed full remuneration therefor. Consequently she has filed to establish her right to legal remedy or redress.

The claim Miss Blackledge makes in quantum meruit for domestic services is inextricable from the relationship of concubinage between herself and Mr. Schwegmann. Miss Blackledge testified at her deposition that she and Mr. Schwegmann had sexual relations on their first date in October or November of 1958, that they had sexual relations throughout the time they dated, and that this was one of the reasons that Mr. Schwegmann paid her money. She testified that a part of her promise to Mr. Schwegmann was to "be a wife to him." She testified that

"John and I made all the commitments and agreements to each other that anyone would take when they got married." Miss Blackledge testified that she and Mr. Schwegmann had sexual relations regularly during the time she lived in his house.

It is clear that the performance of sexual services formed a part of the domestic arrangement between plaintiff and Mr. Schwegmann and also included other duties commonly performed by wives such as cooking and child care. Therefore, no recovery can be had by plaintiff in quantum meruit for domestic services because any domestic service she may have rendered is inextricably interwoven with the relationship of concubinage.

b. Claim in Quantum Meruit for Business Services

In addition to her claim in quantum meruit for domestic services,

plaintiff alleges that she rendered certain business services to defendants. Specifically she claims that she advised Mr. schwegmann on management of his grocery stores, helped write editorials for Schwegmann newspaper advertisements, gave Mr. Schwegmann investment advice, and advised Mr. Schwegmann on his political career.

These services, if proved, may or may not be separate and distinct from the relationship of concubinage. Louisiana law has long held that a relationship of concubinage does not immunize a paramour from claims by a concubine who contributes a full share of capital for a joint business venture between them. Succession of Davis, supra; Delamour v. Roger, 7 La. Ann. 152 (1852). But it is only when those business arrangements are separate from the relationship of

concubinage that these claims will be recognized. In Guerin v. Bonaventure, 212 So.2d at 461, the court stated:

> "Our jurisprudence appears settled to the effect that predicated upon equitable principles, the claims of a paramour and concubine will be recognized and enforced with respect to joint or mutual commercial ventures, provided such enterprises arose independently of the illicit relationship. Heatwold v. Stansbury, 212 La. 685, 33 So.2d 196; Sparrow v. Sparrow, 231 La. 966, 93 So.2d 232; Foshee v. Simkin, La. App., 174 So.2d 915.
>
> The rationale of the rule pronounced in the Heatwole, Sparrow and Foshee cases, supra (and the numerous authorities therein cited) is that where the concubinage is merely incidental to the business arrangements, the equitable rights of both parties will be recognized and enforced provided they be established by strict and conclusive proof. Stated otherwise, the rule is that if the commercial enterprise is independent of the illegal cohabitation, each party may assert his rights in the common endeavor.

Thus, in order for a concubine to successfully assert a claim arising from a business transaction with her

paramour she must establish that the business services were independent of the concubinage and she must produce that evidence to a standard of strict and conclusive proof. Chambers v. Crawford, supra; Heatwole v. Stansbury, supra. When real and substantial services have been performed by a concubine in the operation of a business or the purchase and sale of investment property that are separate and distinct from the relationship of concubinage, these business services can be compensated in quantum meruit upon a showing of clear and convincing evidence.

In considering the present motion for summary judgment, the Court must give the plaintiff every benefit of the doubt. The Court cannot, at this stage of the proceeding, completely rule out the possibility that the plaintiff could establish real and substantial

business services performed for defendants that have not been compensated and that are separate and distinct from the relationship of concubinage. Therefore the motion for summary judgment is denied with respect to the plaintiff's claim in quantum meruit for such services.

Interference with Contract Rights

No interference with plaintiff's contract rights has taken place because no contract exists with which defendants could interfere.

Furthermore, even if there were an action in Louisiana for interference with contract rights, it would be prescribed in this case, since interference with contract rights is a tort.

Simulation and/or Revocatory Action

In her claim for a declaration of a simulation and/or recovatory action, plaintiff avers that she is a creditor

of Mr. Schwegmann and asks that a sale of corporate stock by Mr. Schwegmann be declared null and void. However, for reasons stated above, plaintiff is not a creditor of Mr. Schwegmann and cannot bring an action in simulation or a revocatory action.

For these reasons, defendants' motion for summary judgment is granted dismissing all of plaintiff's claims, except that the Court denies the motion for summary judgment insofar as plaintiff seeks to recover in quantum meruit for the value of uncompensated services, if any, performed separate and apart from the relationship of concubinage, rendered by her in furnishing business assistance to the defendants.

Gretna, Louisiana
September 28, 1982

s/ Frank J. Zaccaria
J U D G E

A TRUE COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE

R. Martin
Deputy Clerk
24TH JUDICIAL DISTRICT COURT
Parish of Jefferson, La.

APPENDIX B

APPENDIX "B"

MARY ANN SCHWEGMANN a/k/a MARY ANN BLACKLEDGE	NO. 83-CA-305
VERSUS	
	COURT OF APPEAL
JOHN G. SCHWEGMANN, JR., JOHN F. SCHWEGMANN, MELBA MARGARET SCHWEGMANN AND SCHWEGMANN BROS. GIANT SUPERMARKETS, INC., SCHWEGMANN BROS. TERMINAL, INC., SCHWEGMANN BROS., INC., SCHWEGMANN BROS., WESTBANK, INC., SCHWEGMANN BROS. WESTSIDE CORPORATION AND SCHWEGMANN VETERANS CORPORATION	FIFTH CIRCUIT
	STATE OF LOUISIANA

APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT IN AND FOR THE PARISH OF JEFFERSON, STATE OF LOUISIANA, NUMBER 231-175, HONORABLE FRANK V. ZACCARIA, JUDGE

THOMAS J. KLIEBERT

JUDGE

(Court composed of Judges Thomas J. Kliebert, H. Charles Gaudin and Edward A. Dufresne, Jr.)

BETTYANNE LAMBERT-BUSSOFF
LAMBERT & WALDRUP
Attorneys at Law
806 Perdido Street, Suite 402
New Orleans, La. 70112
Attorneys for Plaintiff-Appellant

DAVID STONE
JO HARRIET STRICKLER
STONE, PIGMAN, WALTHER, WITMANN
& HUTCHINSON
1000 Whitney Bank Building
New Orleans, La. 70130
Attorneys for Defendants-Appellees

NOV 9 1983

AFFIRMED AND
REMANDED

This is a devolutive appeal by Ms. Mary Ann Blackledge, plaintiff, from a judgment dismissing, on a motion for summary judgment, all of the causes of action alleged in her petition against Mr. John G. Schwegmann, Jr. (hereafter Mr. Schwegmann), et al,[1] defendants, except the cause to recover in quantum meruit for the value of uncompensated services performed separate and apart from the relationship of concubinage.[2]

---

1. Other defendants were Mr. Schwegmann's children, John F. Schwegmann and Melba Schwegmann, and various corporate entities through which Mr. Schwegmann's business affairs were conducted.

2. In her brief, counsel for Ms. Blackledge urges arguments relative to the trial judge's dismissal of a motion to enforce an alleged settlement and a motion to disqualify the defendants' lawyers. These interlocutory orders were issued on the same date as the judgment on the motion for summary judgment. The plaintiff made no application for supervisory writs and her motion for appeal was

restricted to the judgment on the motion for a summary judgment, therefore, these orders are not before us on this appeal.

Ms. Blackledge asserts that the allegations of her petition raise six causes of action against the defendants: (1) Specific performance and/or damages based on breach of contract; (2) Recognition of constructive trust or damages based on implied contract; (3) Declaratory relief; (4) Quasi Contract and/or Quantum Meruit; (5) Interference with contract rights; and (6) Declaration of simulation and/or revocatory action. Additionally, though not an itemized cause, she asserts the existence of a partnership and prays for its dissolution and/or distribution of its assets.

Notwithstanding Rule 2-12-4 of the Uniform Rules for the Courts of Appeal, Ms. Glackledge's brief did not particular-

ize errors in the trial court judgment or specify issues on appeal. Rather, she argues that there are issues of fact and as a matter of law, her petition contains valid causes of action; hence, the motion to summarily dismiss her claims was error. We disagree and affirm the judgment of the trial court.

The petition alleged a contract entered into by Ms. Blackledge and Mr. Schwegmann in May, 1966, whereby they agreed to live together and, while doing so, combine [sic] their skills, efforts, labor and earnings and to share equally any and all assets and property acquired and accumulated as a result of their joint skills, efforts, labor and earnings. The horns of the legal dilemma upon which the petition places her is apparent from her testimony given by deposition. As facts are elicited to show the confection

of an agreement, the nature of the services or their value, the same facts establish that the alleged agreement, if in fact proven, is meretricious and, therefore, void.

Ms. Blackledge claims she and Mr. Schwegmann lived together, without marriage, for twelve years pursuant to an oral agreement. The agreement, according to her, was confected in 1966 when Mr. Schwegmann told her he wanted to "share everything" with her and she said "okay". At the time of this conversation, Mr. Schwegmann was a twice divorced, middle age, male who owned a chain of supermarkets and other assets, and Ms. Blackledge was a 24 year old unmarried femals who had no property or other finsncial assets. The claimed contractual agreement was never reduced to writing and there was no witness to the alleged conversation

in which it was confected.

Following the confection of the alleged contractual agreement, Ms. Blackledge and Mr. Schwegmann lived together continuously from May 1966 to May 1978. In this time frame, Ms. Blackledge contends she rendered services as a companion, housekeeper and cook, as well as a mother to Mr. Schwegmann's children, and as a business advisor, political assistant and confidante to him and his controlled corporations.

Throughout the time they lived together, Ms. Blackledge and Mr. Schwegmann had sexual relations on a regular basis. Ms. Blackledge's living expenses, dental and medical bills, clothing costs, entertainment and traveling expenses were paid for by Mr. Schwegmann. He also provided her with a monthly allowance check during their cohabitation and continued the checks

after they ceased living together until the time this suit was filed. The sexual relationship also continued during visits after the cohabitation had terminated.

In the absence of specific assignments of error or issues, we will discuss each of the asserted causes of action (itemized above as [1] thru [6]) under the captions indicated below.

BREACH OF CONTRACT

Since the issue arises on a motion for summary judgment, we did not need to and made no determination as to whether the so-called contract alleged in the petition and testified to by Ms. Blackledge was in fact proven. Rather, for the purpose of this motion, we consider the facts alleged in the petition, as expanded on and amplified in the depositions as true.

Counsel for Ms. Blackledge prays

for specific performance of the alleged oral contract or alternatively damages for breach of the contract. The defendants contend no valid contract could be confected because (1) the alleged "contractual agreement" is a universal partnership and consequently invalid because it is not in writing; (2) the object of the alleged contract was not certain, hence, it violates the requirements of La. C.C. Articles1179(3) and 1886; consequently no contract was confected; (3) the alleged contract is not supported by adequate consideration; and (4) the alleged contract is void because it is meretricious. The trial judge ruled on only the first and last of defendants' contentions, thus negating the necessity of his considering the others.

A universal partnership is de-

fined by La. C.C. Article 2829[3] as follows:

> "Universal partnership is a contract by which the parties agree to make a common stock of all the property they respectively possess; they may extend it to all property real or personal, or restrict it to personal only; they may, as in other partnerships, agree that the property itself shall be common stock or that the fruits only shall be such; but property

---

3. Title XI of Book III of the Louisiana Civil Code of 1970 OF. Partnership, previously consisting of Articles 2801 to 2890, was revised, amended and reenacted by Acts 1980, No. 150, effective January 1, 1981. ARticles 2829 thru 2834, concerning a universal partnership, which were in effect at the time th[sic] alleged agreement was confected and this suit was filed, were repealed by Act 150 of 1980.

which may accrue to one of the parties, after entering into the partnership, by donation, succession or legacy, does not become common stock, and any stipulation to that effect, previous to the obtaining the property aforesaid, is void."

and expanded on in the two subsequent articles as follows:

Art. 2830. A universal partnership of profits include all the gains that may be made from whatever source, whether from property or industry, with the restriction contained in the last article, and subject to all legal stipulations to be made by the parties.

Art. 2831. If nothing more is agreed between the parties, than

that there shall be a universal partnership, it shall extend only to the profits of the property each shall possess, and of their credit and industry.

As found by the trial judge, the contractual agreement alleged in the petition "fits exactly the codal definition of universal partnership". Ms. Blackledge testified she and Mr. Schwegmann were going to pool all of their assets and share the fruits of their labor, thus clearly asserting an intention to confect a partnership. Indeed, among others, the plaintiff's petition asks the court to consider the conduct and agreement of the parties as a partnership and prays for its dissolution and the distribution of its assets to the partners.

Under the provisions of La. C.C. Article 2834, a universal partnership

cannot be created "... without a writing signed by the parties ..." Hence, Louisiana does not recognize as a valid universal partnership an oral agreement between a man and a woman who live together and agree to split certain properties standing in the name of one of them. Heatwole v. Stansbury, 212 La. 685, 33 So.2d 196 (1947); Foshee v. Simkin, 174 So.2d 915 (1st Cir. 1965); Chambers v. Crawford, 150 So.2d 61 (2nd Cir. 1963); Gadlin v. Deggs, 23 So.2d 704 (4th Cir. 1945).

Ms. Blackledge testified her alleged understanding or agreement was not reduced to writing. Therefore, under the jurisprudence above cited, the trial court held the oral contract alleged by the plaintiff, even if proven, would be a universal partnership and, as such, invalid because not made in writing.

In her brief on appeal, counsel for Ms. Blackledge states "historically concubinage cases have couched the agreement as a universal partnership"; but then argues "there is no statutory reason why the courts began to apply partnersihp law to any oral contract". Consequently, "there is no explanation [why] within the body of concubinage law except that the goals of the parties were joint and the state is a community property state". We suggest the explanation is found in the fact that the community of acquets and gains created by the marriage is legally considered a partnership between the partners in the marriage.

In most concubinage cases, as is the case here, the goal of the plaintiff is to obtain for the concubine the civil benefits which would flow to the wife as a marital partner. In the absence of the

marriage, some relationship, other than a sexual one, must exist between the parties for the civil benefits to flow to the person acting as the pseudo wife. Consequently, it is logical for the concubine's counsel to urge a partnership akin to the community of acquets and gains which applies to marital partners and for the court to apply partnership law in denying it.

As argued by counsel for Ms. Blackledge, it was theoretically and legally possible for the parties to establish a commercial or some partnership other than a universal partnership. However, the facts are that under the allegations of the petition and the testimony of Ms. Blackledge the relationship created was that of a universal partnership, not some other type. Additionally, this court cannot lose tract of reality. Although

it was theoretically and legally possible for the parties to marry and thus create a legal partnership based on a sexual relationship, the facts here are that the parties did not marry. Hence, as subsequently pointed out in this opinion - however the relationship is catagorized - under the law the alleged agreement is meretricious one and therefore void. For the same reason, applying the present partnership articles of the Civil Code (which do not require the partnership to be in writing) would not produce the results desired by the plaintiff.

Accordingly, we uphold the trial judge's ruling that the alleged oral agreement asserted by Ms. Blackledge would be a universal partnership and thus be invalid because not made in writing. Further, even if the alleged agreement was not required to be in writing, it would be unen-

forceable because it is a meretricious one. Hence, except as we hereafter expand on the concept of a meretricious agreement under the caption Quantum Meruit, it is unnecessary for us to consider the other grounds urged by the defendants as defense to the plaintiff's claim for breach of an alleged contract.

RECOGNITION OF CONSTRUCTION TRUST OF DAMAGES BASED ON IMPLIED CONTRACT

Ms. Blackledge contends the fact she and Mr. Schwegmann lived together as man and wife for twelve years caused a contract to be implied between them. On the basis of this implied contract she asserts the creation of a constructive trust for her benefit over the joint assets held by Mr. Schwegmann or alternatively the right to recover damages based on his breach of the "implied contract". She argues the constructive trust is im-

posed as an equitable remedy to protect her interest in the joint properties because she had a "reasonable expectation and belief" she and Mr. schwegmann had an agreement and she had the greatest confidence and trust he would carry out the agreement.

The legal concept for a constructive trust is to impose an equitable lien on property because of a fiduciary relationship between the parties. The heart and soul of the equitable lien is a fiduciary relationship. Neither in the pleadings nor in the deposition of Ms. Blackledge is there established the requisite fiduciary relationship. Further, it is clear the Louisiana Civil Code prohibits the imposition of a constructive trust on property. Succession of Onorato, 219 La. 1, 51 So.2d 804 (1951); In re Liquidation of Canal Bank & Trust Co.,

181 La. 856, 160 So. 609, 616 (1935); see also Mansfield Hardwood Lumber Company v. Johnson, 268 F.2d 317 (5th Cir. 1959); In re Hagin, 21 F.2d 434, 437 (E.D. La. 1927), aff'd sub nom, Phoenix Bldg. & Homestead Ass'n v. E. A. Carrere's Sons, 33 F.2d 563 (5th Cir. 1929); Bankhead v. Maryland Casualty Company, 197 F. Supp. 879 (E.D. La. 1961).

Her theory for recovery under an implied contract requires the characterization of her relationship with Mr. Schwegmann as a marriage, when in fact they were never married and neither of them ever believed they were married to each other. As a matter of fact, Ms. Blackledge testified she knew Mr. Schwegmann had a marriage contract (against formation of a community of acquets and gains) with his second wife because, as she stated, "he wanted the property protected

in the event of a divorce".

In oral arguments and in appellant's briefs, counsel for plaintiff strenuously urges the novelty of the relationship and importance of her case in a changing society. The trial judge rejected the argument and gave excellent legal written reasons for doing so. Therefore, we adopt his reasons which follow as our own:

> "Claims like the plaintiff's are not foreign to Louisiana courts. Louisiana law has defined a person in Miss Blackledge's position as a concubine, a woman who 'occupies the position, performs the duties, and assumes the responsibilities of a wife, without the title and privileges flowing from a legal marriage.' Purvis v. Purvis, 162 So. 239. 240 (La. App. 2d Cir. 1935). Louisiana terminology for the man with whom a concubine lives is 'paramour'.
>
> A great body of jurisprudence has grown up confirming that concubines and paramours have no rights in each other's property. Jackson v. Hampton, 134

So. 2d 114 (La. App. 2d Cir. 1961); Rochelle v. Hezeau, 15 La. Ann. 306 (1860). See also Mintz & Mintz, Inc. v. Color, 250 So.2d 816 (La. Appl. 4th Cir. 1971) (where no garnishment of a woman's wages could be had for the debt of her paramour) and Sims v. Matassa, 200 So. 666 (La. App. 1st Cir. 1941) (where no seizure of a woman's property could be accomplished to satisfy her paramour's debt).

The Fourth Circuit Court of Appeal recently refused to recognize a concubine as a surviving spouse in community and succinctly described Louisiana law: 'The law could scarce be plainer: a sharing of bed and table, for a night or for a lifetime, does not by itself constitute marriage.' Succ. of Donohue, 389 So.2d 879, 880 (la. App. 4th Cir. 1980). See also Sesostris Youchican v. Texas & P. R. Co., 147 La. 1080, 86 So. 551 (1920); Foshee v. Simkin, supra."

A substantial portion of the plaintiff counsel's brief is devoted to a historical analysis of the Louisiana Law on concubinage to show that its development was predicated on public policy construed by the judiciary. She then

argues that changes in the mores of society as regards cohabitation have changed so radically, we should not impose on a man and woman who cohabitate without marriage a standard based on moral considerations merely to protect Victorian values which have been abandoned by so many in our society. Therefore, she urges it is time for the courts of Louisiana to develope a legal vehicle to protect the property rights obtained during cohabitation by a male and female in a sexual relationship without benefit of marriage. In support of the contentions, she urges a constitutionally protected right against discrimination between wives and concubines. She compares the discrimination she sees to that formerly existing between legitimate and illegitimate children and says concubinage discrimates against black heritage and culture but more particularly

against women.

We neither agree with her appreciation of the sociological changes nor the necessity for a change in legal philosophy as to concubinage nor do we see the violation of a constitutionally protected right against discrimination. The State has valid reason to discourage relationships which serve to erode the cornerstone of society, i.e., the family. In every known civilized society, replacement of its members is performed within the context of the family. Although it is conceivably possible that sexual relations and child rearing could be deregulated or governed by norms that do not entail the encouragement, support and protection of family institutions, past experiments in that direction have failed. (See "The Attempt to Abolish the Family in Russia" in The Great Retreat by Nicholas S.

Timasheff, Copyright 1946 by E.P. Dutton & Co., Inc. Further, in the case of the children, legitimate or illegitimate, they were not the cause of their status, but here the status of concubine was a voluntary and desired one, for the parties neither married, wanted to marry, nor believed they were married.

Under present Louisiana law, unmarried cohabitation does not give rise to property rights analogous to or similar to those of married couples. Concubines have no implied contract or equitable liens that afford them any rights in the property of their paramours. Moreover, in our view, although Victorian, the values sought to be protected by the formulation of those legal concepts are imperative if we are to maintain our civilized society.

QUASI CONTRACT AND QUANTUM MERUIT

The plaintiff asserts a right

to recover compensation for the services rendered to Mr. schwegmann under a quasi contract or quantum meruit theory. Under our law, when one benefits or is unjustly enriched from the labor of another, the law implies a promise to pay a reasonable amount for the labor, even in the absence of a specific contract. La. C.C. Article 1965. Bordelon Motors, Inc. v. Thompson, 1976 So.2d 836 (3rd Cir. 1965).

Here Ms. Blackledge testified that she rendered domestic services and business services and here claims compensation for both. Since the trial court and we reached conclusions based on the nature of the services, we consider each category of services separately.

Domestic Services

Ms. Blackledge stated in her deposition that she performed domestic services including cooking, cleaning,

chauffering, taking care of Mr. Schwegmann's daughter, and acting as a nurse to him after his stroke. She also stated that she and Mr. Schwegmann had sexual relations: (1) on their first date in October or November of 1958; (2) throughout the time they dated before living together; (3) while they lived together in his house; and (4) when she visited after she left his house, and that this was one of the reasons Mr. Schwegmann paid her money. In describing her alleged agreement with Mr. Schwegmann, she testified that part of her promise was to "be a wife to him" and that "John and I made all the commitments and agreements to each other that anyone would take when they got married". She understood a condition of the agreement to be that while they lived together neither of them would have sexual relations with anyone else.

Clearly from her testimony, the domestic services of child care, nursing, cooking, etc., were inextricably interwoven with sexual services in a concubinage relationship. Louisiana law clearly disallows claims in quantum meruit by concubines for domestic services when the services are interwoven with sexual relationship.

From early in Louisiana law, where parties to a contract cohabit in a sexual relationship and their agreement to cohabit is part of the basis for the agreement between them, the agreement is unenforceable because it is an unlawful contract for meretricious services. Delamour v. Roger, 7 La. Ann. 152 (1852). See also La. C.C. Article 1892; Sparrow v. Sparrow, 231 La.966, 93 So.2d 232 (1957); and Foshee v. Simkin, 174 So.2d 915 (1st Cir. 1965) for more recent cases.

More recently, the First Circuit

Court of Appeal in Guerin v. Bonaventure, 212 So.2d 459 (1st Cir. 1968) at pages 464-65 denied the claims of a concubine in quantum meruit in the following language:

> "in view of the parties living together as man and wife, it was only natural that plaintiff lend some assistance to the paramour who furnished full subsistence and a home for plaintiff and her child as if they were his lawful wife and offspring. In this manner plaintiff received full remuneration for services rendered to defendant Bonaventure in performing the duties of mistress of his household and some measure of assistance in his various business enterprises.
>
> * * *
>
> All of the circumstances considered, the services rendered by plaintiff are so completely intertwined with her illegal cohabitation with Bonaventure as to be utterly indistinguishable therefrom. In such circumstances, the remuneration received in the form of support and subsistence over the years is in law deemed full remuneration therefor. Consequently she has failed to establish her right to legal remedy or redress."

Clearly, the plaintiff here has no valie cause of action to recover in quantum meruit for the domestic services she claims to have rendered for by her own testimony the domestic services were inextricably interwoven with the sexual relationship.

Business Services

Plaintiff testified she performed business services for Mr. schwegmann and his corporations by (1) helping him write editorials for Schwegmann's newspaper advertisements; (2) rendering investment advice; (3) assisting and rendering advice as to Mr. Schwegmann's political career; and (4) keeping him informed of things she saw in the stores which could have an adverse effect on the business. Under our law, the plaintiff may be entitled to compensation for the rendition of the services if the services

were in fact rendered and do meet the prerequisites of the equitable principles formulated by the jurisprudence for recovery. In the Bonaventure case, supra, the Third Circuit clearly stated the equitable principles upon which recovery can be had:

> "Our jurisprudence appears settled to the effect that predicated upon equitable principles, the claims of a paramour and concubine will be recognized and enforced with respect to joint or mutual commercial ventures, provided such enterprises arose independently of the illicit relationship. Heatwole v. Stansbury, 212 La. 685, 33 So.2d 196; Sparrow v. Sparrow, 231 La. 966, 93 So.2d 232; Foshee v. Simkin, La. App., 174 So.2d 915.
>
> The rationale of the rule pronounced in the Heatwole, Sparrow and Foshee cases, supra (and the numerous authorities therein cited) is that where the concubinage is merely incidental to the business arrangement, the equitable rights of both parties will be recognized and enforced provided they be established by strict and conclusive proof. Stated otherwise, the rule is that if the commercial enterprise

> is independent of the illegal cohabitation, each party may assert his rights in the common endeavor."

Since the issue arose on a motion for summary judgment the trial judge concluded and we agree the plaintiff must be given every benefit of the doubt. Conceivably given the opportunity to do so, she could establish real and substantial business services performed for the defendants, including Mr. Schwegmann, that have not been previously compensated and which were separate and distinct from the concubinage relationship. Accordingly, we agree with the trial judge's ruling excepting her claim of compensation for business services from the summary dismissal of her claims.

OTHER ASSERTED CAUSES OF ACTION

In addition to those discussed above, the plaintiff in her petition as-

serted that (1) she was entitled to a declaratory relief because an actual controversy has arisen between her and the defendants relative to her legal rights; (2) the defendants other than Mr. Schwegmann have interfered with the contractual rights she obtained through her agreement with Mr. Schwegmann, and (3) she is a creditor of the defendant Mr. Schwegmann and his purported sale of the stock of his controlled corporations to his son was a simulation or in fraud of her rights as a creditor and consequently should be revoked. The trial judge rejected her contentions on the grounds the request for declaration relief and the claim for interference with her contractual rights are collaries to her claim for breach of contract or implied contract and falls for the same reasons those asserted claims fell. Additionally, he rejected the claims

in simulation or revocation because the plaintiff was not a creditor of Mr. Schwegmann. Counsel for the plaintiff makes little or no direct comment relative to these rulings in her brief. In our view, the trial judge's ruling was proper.

CONCLUSION

After a careful review of the record, the arguments of counsel and the trial judge's ruling, we cannot say the trial judge erred in his findings, his rulings or in his determination and application of the laws of Louisiana to the record before us. Paramount in the review of the petition is the recognition it was molded in conformity with the distinctions drawn by the Supreme Court of the State of California in Marvin v. Marvin, 557 P. 2nd 106 (Calif. 1976). But also paramount in the review of the plaintiff's

deposition is the recognition that her testimony does not produce a factual setting consistent with the allegations of the petition. Furthermore, we do not believe the prevalence and social acceptance of non-marital sexual relationship at this time is justifiable grounds to abandon the Louisiana concept of the unlawfulness of a concubinage relationship.

To equate the non-marital relationship of concubinage to a marital relationship is to do violence to the very structure of our civilized society. Without the family, the State cannot exist and without marriage the family cannot exist. Thus, aside from religious or moralistic values, the State is justified in encouraging the legitimate (marriage) over the illegitimate (concubinage), for to do otherwise is to spread the seeds of destruction of the civilized society.

Unwed cohabitors involved in concubinage relationships have voluntarily chosen not to marry and they should not expect to receive the civil effects flowing by virtue of a marital state. In the absence of ceremonial marriage, in order ti discourage the relationship, the State has not established, for a male and female who cohabit, statutory obligations of fidelity, support and assistance, nor a statutory recognition of a right to support or to assistance upon termination of the relationship. As the Louisiana courts have previously stated, discouraging the establishment of a sexual relationship without ceremonial marriage is in the interest of protecting the moral fabric of society and its preservation against those who flaunt its standards and values. See Succession of Battiste, 145 So.2d 668 (4th Cir. 1962) and Texada v. Spence, 166

La. 1020, 118 So. 120 (1928).

Accordingly, the judgment of the trial court is affirmed and the case remanded to the trial court to proceed on the merits of the plaintiff's claim for compensation for business services. All costs of the appeal to be borne by the plaintiff.

AFFIRMED
AND
REMANDED